

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:08-HC-2086-D

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	
)	
v.)	ORDER
)	
RICHARD S. GARCIA,)	
)	
Respondent.)	


On September 30, 2011, the government filed a motion for voluntary dismissal with leave of court [D.E. 44]. On October 4, 2011, pursuant to 28 U.S.C. § 636(b)(1) and by consent of the parties [D.E. 47], United States Magistrate Judge James E. Gates held a hearing on the government's motion, during which the parties filed in open court a proposed settlement agreement signed on September 30, 2011 [D.E. 48]. On the same day, Magistrate Judge Gates issued a memorandum and recommendation ("M&R"), recommending that the court allow the motion [D.E. 49], and the parties executed and filed a waiver of their right to object to the M&R [D.E. 50]. For the reasons that follow, the court adopts the M&R and dismisses the case.

"The Federal Magistrates Act requires a district court to make a de novo determination of those portions of the [magistrate judge's] report or specified proposed findings or recommendations to which objection is made." Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (alteration in original) (emphasis removed) (quotation omitted). Absent a timely objection, "a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Id. (quotation omitted).

The court has reviewed the M&R and the record, and is satisfied that there is no clear error on the face of the record. The court hereby adopts the M&R and finds that respondent was fully competent to enter into the settlement agreement, that he knowingly and voluntarily did so after having an adequate opportunity to confer with counsel, and that the government also knowingly and voluntarily entered into the settlement agreement.

Therefore, the court ALLOWS the motion for voluntary dismissal [D.E. 44] and this case is DISMISSED WITH PREJUDICE pursuant to Fed. R. Civ. P. 41(a)(2). The court LIFTS the stay of respondent's release from the custody of the Bureau of Prisons, and ORDERS respondent's immediate release from Bureau of Prisons custody. Respondent shall report to the United States Probation Office for the District of Utah within 72 hours of his release in order to comply with the judgment entered by that court in the case of United States v. Garcia, No. 2:05-CR-00677-TS, [D.E. 19] (D. Utah Apr. 13, 2006). The Clerk of Court is DIRECTED to send a copy of this order to the Clerk of Court for the District of Utah, 350 South Main Street, Room 150, Salt Lake City, UT 84101.

SO ORDERED. This 4 day of October 2011.


JAMES C. DEVER III
United States District Judge